BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6223 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

FRANCES H. WAINER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-224

FORMERLY
BENEFIT DECISION
No. 6223

SSA No.

ACE BEAUTY SUPPLY CO., INC.
(Employer)

STATEMENT OF FACTS

The above-named claimant appealed to a Referee from determinations of the Department which disqualified the claimant for benefits under sections 1256 and 1257(a) of the Unemployment Insurance Code. Also in issue is a ruling of the Department which held that the claimant had been discharged for misconduct within the meaning of section 1030 of the code. On November 12, 1954, the California Unemployment Insurance Appeals Board set aside the decision of the referee and assumed jurisdiction under section 1336 of the code.

The claimant was last employed as a bookkeeper by a Los Angeles company for approximately four weeks to June 23, 1954. She was discharged for reasons hereinafter related.

Having previously filed a claim for unemployment compensation benefits effective March 21, 1954, the claimant registered for work and filed an additional claim as of June 27, 1954. The Department disqualified the claimant for benefits under section 1256 of the code on the ground that she had been discharged for misconduct in connection with her most recent work, and under

section 1257(a) of the code on the ground that she had wilfully made a false statement with the intent to obtain benefits. The Department also issued a favorable ruling to the employer.

The claimant had been referred to the employer by the Department. It was understood that the claimant was to work a five-day, forty-hour week at $75 per week. When the claimant applied for the position she was asked by the employer whether she was willing to work overtime. She indicated her willingness to do so if it was necessary to keep her work current. Nothing was said about working on Saturdays. Thereafter, at the end of each week, the employer asked the claimant if she would work on Saturday and on each occasion the claimant had a reason for refusing. At the time she was discharged the claimant was informed that she was being terminated because she was not cooperative and her work was not "up to par." The claimant had kept her work current and had worked extra hours assisting a fellow employee. She assumed that her discharge was caused by her failure to work Saturdays. The employer informed a Department representative that the claimant was discharged because she was not capable and that the firm's office force did not work Saturdays with the exception of a machine operator who did so occasionally.

When the claimant filed her additional claim she indicated that she had been "fired as I did not wish to work Saturdays without remuneration." Subsequently, when the claimant returned to the employer's establishment to collect her final pay check the employer asked that she withdraw such statement and offered her an extra day's pay. The claimant refused. Although notified of the time and place of the hearing the employer did not appear.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant who has been discharged from his most recent work for reasons constituting misconduct in connection therewith. Considering the employer's statement to the Department we find that the efficient cause of the claimant's discharge was her inability to satisfy the employer's standards in relation to the quality of her work. We have held that mere ineptitude is not misconduct within the meaning of section 1256 of the code

(Benefit Decision No. 4825). We reach the same conclusion in this case. It follows that the employer is not entitled to a favorable ruling under section 1032 of the code (Ruling Decision No. 13).

The remaining issue in this matter is whether the claimant made a false statement of a disqualifying nature when filing her additional claim. In our opinion the evidence establishes that the claimant, in all honesty, believed that the true reason for her discharge was her refusal to work Saturdays. In Benefit Decision No. 5904 we stated:

> "It is also our opinion that neither simple negligence nor innocent mistake can support a charge of wilful omission or commission of an act."

In the same decision we cited Benefit Decision No. 4423 for the principle that a disqualification under section 58(a)(3) of the act (now section 1257(a) of the code) is applicable only if the misrepresentation or failure to report was wilful and made for the purpose of obtaining benefits. We also cited Benefit Decision No. 4707 for the proposition that a claimant is entitled to the presumption that he is innocent of fraud, crime, or wrong in misstating or failing to report the fact in question. Based on these principles we conclude that the claimant herein did not wilfully make a false statement with the intent to obtain benefits within the meaning of section 1257(a) of the code.

DECISION

The determination and ruling of the Department are reversed. Benefits are payable provided the claimant is otherwise eligible. Any benefits paid to the claimant which are based upon wages earned from the appellant prior to June 23, 1954, are chargeable under

section 1032 of the code to the account of the employer herein.

Sacramento, California, January 14, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6223 is hereby designated as Precedent Decision No. P-B-224.

Sacramento, California, February 5, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT